



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

**Department of Environmental
Conservation**

Division of Spill Prevention and Response
Contaminated Sites Program

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File: 2445.38.004

October 30, 2014

Certified Mail Return Receipt Requested
Article No. 7012 2210 0002 1216 2162

Bruce Loudermilk, Director
Bureau of Indian Affairs, Alaska Region
3601 C Street, Suite 1100
Anchorage, Alaska 99577

Re: U.S. Bureau of Indian Affairs as a Potentially Responsible Party at Scammon Bay,
Former BIA School

Dear Mr. Loudermilk,

This letter concerns the responsibility of the U.S. Bureau of Indian Affairs (BIA) to address petroleum and hazardous substance contamination at the Scammon Bay former BIA school site, located in the native village of Scammon Bay, Alaska. Because BIA is documented as a past owner and operator of this site, BIA is identified to be financially responsible or liable under AS 46.03.822 (Strict Liability for the Release of Hazardous Substances) for the investigation and cleanup of any hazardous substance contamination that might be present.

Background

In August 2014 a contractor working for the Association of Village Council Presidents was installing storm drains in the area and discovered contamination downgradient of the former BIA school tank farm in the vicinity of the former BIA drum storage area. The contamination was observed to extend from the ground surface to at least 6 feet below ground surface and was reported to the Alaska Department of Environmental Conservation (DEC) Prevention and Emergency Response (PERP) via telephone Spill Notification on August 5, 2014 by Lee Lay, R.P. Kinney Associates.

Records show that BIA owned and operated this school and tank farm from 1954 to 1989, indicating contamination could have occurred during BIA ownership and/or operation. Additionally, a potentially contaminated soil stock pile has been identified which will also require characterization.

Under Alaska Statute (AS) 46.03.822(a), strict liability attaches jointly and severally to entities that,
inter alia:

- owned or controlled the hazardous substance at the time of the release or threatened release;
- owned or operated the facility from which there is a release, or a threatened release; or
- owned or operated the facility at which the hazardous substance was disposed of and from which there is a release, or a threatened release.¹

Based on the information currently available to us, DEC has determined that BIA must take the following response actions with regard to the Scammon Bay village school site and tank farm:

- a) continue to meet with CSP and PRPs, including DEED and LYSD as well as any others identified in your response, to decide upon a process for conducting site characterization, containment, and remedial action in a timely and cooperative manner, and
- b) complete site characterizations and cleanup at the village schools and tank farms in accordance with 18 AAC 75.325-.390.

Please refer to Fred Vreeman's "U.S. Bureau of Indian Affairs as a Potentially Responsible Party at Alaska Village Schools" letter, dated May 21, 2014 for an overview of potential BIA responsibility for contamination at this and other Alaska village schools sites. While DEC waits for a response to this letter, DEC will continue to send individual PRP for those sites with particularly high community impact. As evidenced by the impacts outlined in this letter and in forthcoming PRP letters for other Alaska village school sites, it is imperative that you coordinate with DEC and other PRPs to complete the response actions outlined above.

A waiver of federal sovereign immunity in this context is provided by the Resource Conservation and Recovery Act (RCRA) at 42 U.S.C. § 6972(a)(1)(B) and 42 U.S.C. § 6961. *See Blue Legs v. United States BIA*, 867 F.2d 1094, 1098-99 (8th Cir. 1989); *Parola v. Weinberger*, 848 F.2d 956, 962 n.3 (9th Cir. 1988); *see also Zands v. Nelson*, 779 F.Supp. 1254, 1261-62 (S.D. Cal. 1991) (holding that RCRA does not include an exception for petroleum).

DEC will provide technical assistance and regulatory oversight to BIA and any other PRPs so long as they are responding adequately to the release. *See* AS 46.04.020(b). Please note that a responsible party is required to "complete cleanup in a period of time that the department determines to be protective of human health, safety, and welfare, and of the environment" and to "prevent, eliminate, or minimize potential adverse impacts to human health, safety, and welfare, and to the environment, onsite and offsite, from any hazardous substance remaining at

¹ Pursuant to the same statute, a responsible party pays "for damages, or the costs of response, containment, removal, or remedial action incurred by the state, a municipality, or a village . . . resulting from an unpermitted release of a hazardous substance, or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance." AS 46.03.822(a). Unlike the federal statute after which it is patterned, our strict liability statute defines "hazardous substance" to include petroleum-related products. *See* AS 46.03.826(5) and (7). The term "facility" includes a "building, structure, installation" and a "site or area at which a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located," and thus would encompass a petroleum-contaminated village school site or tank farm. *See* 46.03.862(3)(A).

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the site." 18 AAC 75.325(f)(1)(C) and (D). If BIA or the other PRPs are unwilling or unable to respond adequately to the release, however, DEC will direct the ineffective agency to take additional measures or to cease cleanup activities altogether, and/or DEC may begin cleanup activities of its own. *See* AAC 75.320(b). Environmental releases and human exposures at this site are already occurring and response actions need to be scheduled as soon as possible.

Alaska Statutes require the State to recover all costs associated with cleanup at contaminated sites. In the event that the State assumes the lead role in site characterization, containment, or cleanup, AS 46.08.070(a) mandates the commissioner of DEC to seek recovery for the cost of the response actions. Recoverable costs include contracts to carry out the response actions; the direct costs to the State, such as oversight, legal consultation, and materials; and the indirect costs to the State, such as administration, interest, and overhead. *See* AS 46.03.760(d). Because CSP has determined that BIA is a PRP, DEC will begin billing you for the State's expenditures associated with the petroleum contamination at this former BIA school.

If you are aware of any other persons or entities who may be responsible for the releases at this village school site and tank farm, we encourage you to provide us with their identities and the reason(s) you believe they are potentially responsible for the contamination at the particular site.

In an effort to obtain more information about this site, we request completion of the attached questionnaire. *See* AS 46.03.020(7). Compliance with this information request is mandatory. Failure to provide a full and correct response to this request is a violation of 18 AAC 75.325 for which a sum may be assessed by a court in a civil action and may ultimately lead to a judgment ordering you to pay money to the State. *See* AS 46.03.760(a).

Please respond in writing within thirty days of the date of this letter addressing your responsible party status and intended actions with respect to this ongoing hazardous material release event. Any emergency removal action, site investigation, cleanup action or a natural resource damage assessment at contaminated site must be coordinated with DEC and have DEC approval prior to any field activities. In addition to your written response, please tell me your availability for an in person meeting to review our list, develop an action plan for future work, and establish an agreement for how we will handle planning, work assignments, costs, and billings for regulatory oversight.

If you have any questions concerning this matter, please contact me at (907) 451-2156.

Sincerely,



Keri DePalma
Environmental Program Specialist

Attachments: Site Questionnaire
Scammon Bay, Former BIA School Site Figure

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cc : Mark Kahklen, BIA Regional Environmental Specialist, via email
Alex Russin, Superintendent Lower Yukon School District, via email
Danielle Pensley, Alaska Department of Law, via email
Fred Vreeman, DEC, via email
Jennifer Roberts, DEC, via email
DEC SPAR Cost Recovery, via email

Please precede each answer with the number of the question to which it corresponds. Please direct any questions concerning this information request to **Fred Vreeman, Contaminated Sites Program, DEC, 610 University Avenue, Fairbanks, AK 99712**. Thank you for your cooperation.

1. Provide name and company affiliation of the person answering the questionnaire.
2. Provide copies of all studies, reports, and supporting information (including pre-acquisition assessments and work done on behalf of other parties) which you have knowledge of which address past and/or present environmental conditions at the site.
3. Identify the name, title, address, and phone number of the party(s) who are responsible for preparing the studies or information. Information which has been previously submitted need not be submitted again (unless specifically requested in a subsequent communication) if you can provide the name of the office (and name and title of the DEC officer if known) to whom the report was previously provided to.
4. Provide a description of any ongoing or planned investigations or cleanup work at the site. Identify the names, titles, and phone numbers of the individuals responsible for preparing the studies or information.
5. Provide a description of known releases at the site (date of occurrence, quantity released, type of substance release) and information on any suspected releases, which may have occurred or are occurring.
6. Describe the nature of past and present operations at the site; in particular, any actions that may have caused the release or threat of release at the site.
7. Provide a list of any permits issued by DEC, which relate to activities at the site and a list of RCRA identification numbers which may be held.
8. Identify persons to whom you leased all or a portion of the property and describe the nature of their operations. Provide a list of persons and their phone numbers and addresses of persons who have knowledge about the use of hazardous materials at the site.
9. Provide information regarding the existence of insurance coverage for damages resulting from releases of hazardous substances and copies of all such insurance policies, both currently in effect and in effect during the periods of activity in question.



MAP NOTES
 This map was prepared by the Coastal Village Design Firm (CVDF) in cooperation with the Alaska Department of Commerce, Community, and Economic Development (Commerce) using funding from the Alaska Coastal Management Program and the Initiative for Accelerated Infrastructure Development (AIID). The AIID is supported by grants from the Federal Coastal Program Development, Alaska Department of Transportation and the Alaska Coastal Program. The Association of Village Council Presidents contracted CVDF to provide Professional Services. The BIA area of 2007 is prepared by the map.

This map should not be construed as a survey. On-site surveys should be conducted prior to engineering or construction.

This map was compiled to meet horizontal and vertical accuracy in accordance with national map accuracy standards.

Property and utility information has been generated from readily available sources with limited accuracy checks. Property information is not intended to represent a title search of the Recorder's office record.

Utility locations is approximate and shown only by the main lines. Generally, the information is derived as of December 2007.

The Alaska State Health Commission provided sanitation facility records.
 This map is based on photography acquired on July 4, 2007, at a nominal scale of 1 in = 600 ft. Aerial-photos were prepared by orthorectified and topographic mapping. The orthorectified is an aerial photo which has been corrected by computer to ground control stations, to remove distortions and warpage due to ground topography and aircraft tilt and trim.

GEODETIC CONTROL
 The horizontal control monument for the digital orthophoto was an NAD 83 station for GPS for TMA "Base 1". The horizontal datum NAD 1983 coordinates for this TMA are North 91° 50' 40.0000" West 147° 34' 01.5700". The vertical control monument was TMA "Base 1". The Geoid 98 elevation for this station is 5.00 feet.

The City of Anchorage has been advised in this contract using high-precision GPS methods and the adjusted coordinates and elevation for US Monument "C", Lot 6 (US 60697), were calculated to establish a local control reference. The NAD 1983 coordinates for this monument are North 91° 50' 28.1700" West 147° 34' 01.5700" and the elevation is 14.00 feet.

The contours were prepared at 10 (3) foot contour intervals with 1-foot contours every ten (10) feet. The two (2) foot contours have not been shown for clarity.

Former BIA School Sites



ALASKA COASTAL MANAGEMENT PROGRAM

Department of Commerce, Community, and Economic Development